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LIMITATIONS ON MONETARY POLICY IN AN OPEN ECONOMY

Tilford C. Gaines[*]

Address before the annual meeting of Omicron Chi Epsilon, National Honor Society in Economics, New York, December 27, 1960

During the 1954 and 1958 business recessions the Federal Reserve System developed monetary policy techniques for dealing with recession which most of us probably assumed would continue to be employed in future periods of economic slack. In substance, these techniques consisted of "erring on the side of ease" in creating monetary conditions so liquid that there could be no question but that the availability of money and credit would be abundantly adequate to support and encourage business revival. Not content to accept the old adage that it is impossible to "push on a string", the Federal Reserve pressed reserves into the banking system in such quantities that banks were induced to bid aggressively for investment securities, principally short and intermediate-term Government obligations. Two consequences were a pronounced increase in the money supply, despite inactive demand for loans, and extremely low market rates of interest.

It has generally been granted that monetary policy in these last two recessions was appropriate and that it probably contributed to the mildness of the decline and to the speed with which recovery developed. When unemployment is climbing and business activity slipping, the monetary authorities surely should do all in their power to assure that credit is readily available for all worth-while purposes. But we now find ourselves in a recession that is perhaps seven or eight months old, and the Federal Reserve System has not yet created the degree of monetary ease that prevailed in 1954 and 1958. Money has been made easy, to be sure, but the pressure toward ease from the monetary authorities has been far less aggressive than we might have expected on past performance. Whereas the three-month Treasury bill rate settled well below one per cent in the earlier episodes, it has remained above two per cent this time. Intermediate and longer-term rates of interest have been reduced significantly from their high level of a year ago, but they remain well above the lows reached in the earlier recessions. And the money supply, which was forced up by 3 per cent and 4 per cent in 1954 and 1958 has increased scarcely at all since last summer and is, in fact, lower than a year ago.

The surrounding circumstances which determine the response of the banking system and the economy to monetary policies are never the same from one period to the next, and to a degree this fact explains the different set of developments in this recession. But this explanation is at best partial and tends to miss the central point. The Federal Reserve System could, if it wished, create the degree of money and credit ease it has in other recessions. The monetary authorities have chosen, however, not to press with so much vigor to assure monetary liquidity. And it is apparent that the principal reason for this decision is concern that efforts by the Federal Reserve System to generate greater ease might, by driving our rates of interest further out of line with rates available in foreign markets, encourage an accelerated movement of short-term funds out of this country. To the extent that this were to result, our already troublesome balance of payments deficit might be enlarged and the danger of loss of confidence in the dollar enhanced.

It is very easy and all too common to oversimplify the problem the Federal Reserve System confronts in developing policies that give the proper weight to both domestic and international considerations. Realistically, there is little danger that even significantly lower rates of interest in this country would, in the course of the present recession, lead to a flow of investment funds abroad in such amounts as to endanger our gold reserves or bring the value of the dollar into serious question. To the extent that such flows represented the repatriation of foreign-owned dollar balances, our balance of payments would be unaffected, and there is at least some question as to whether a sizable amount of domestic investment funds might be attracted into foreign money markets by interest rate differentials. And in any case, there are severe limits on the ability of financial markets abroad to absorb flows of funds in amounts that would be seriously damaging to our position and on the willingness

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of foreign monetary authorities to permit such flows.

On the other hand, a case can be made for the argument that domestic economic conditions have not required a more aggressively easy policy by the Federal Reserve. Certainly in the case of short-term rates it is difficult to see in what way a one per cent bill rate would do a great deal more than a two per cent rate. And it should be noted that unless it can be argued that the domestic economy would benefit from lower short-term rates, the often-expressed concern that longer-term rates have not been brought into a lower range during this recession is more a concern for the manner in which monetary policy has been carried out than for the degree to which the Federal Reserve System has pushed its easy money policy.

In short, it seems likely that the international repercussions would not be critically severe if the Federal Reserve were to pursue a more aggressively easy policy, but at the same time it seems equally likely that the domestic benefits of such a policy would be nominal. There is little reason to quarrel with the course that the monetary authorities have charted between domestic and international requirements in this, their first modern experience with monetary policy in a world of open economies and convertible currencies.

The truly important aspect of the problem of conflicting domestic and international requirements that the Federal Reserve has faced during the present recession lies, however, in what this experience teaches us for the future rather than in our immediate success in charting a policy course. In many ways the problem has been a rather simple one this time, simpler than we may anticipate in the future. Despite the worrisome balance of payments deficits of the past decade, and particularly the past three years, our international reserves are still ample and adequate to any near-term needs. Also, confidence in the dollar and in the determination of our government to correct our balance of payments through sound policies is still firmly rooted abroad. Our position in either or both of these respects may be less advantageous at some future time when the Federal Reserve confronts a situation similar to the present one. And perhaps most important is the fact that we still are only in the process of rebuilding an international financial market. Particularly in this country but to only a lesser degree abroad, investors and financial institutions are oriented toward domestic financial markets and are not fully familiar with opportunities for portfolio investment abroad. It seems almost certain that the passage of time will witness a steady decline in financial provincialism and a steady growth in the movement of funds across national boundaries in search of interest advantage. Such a development would have obvious consequences for the ability of a central bank anywhere in the world to pursue independent policies geared to the needs of its domestic economy.

A principal factor complicating the Federal Reserve System's money management job at the present time is the stubborn deficit in our international balance of payments. This deficit has undoubtedly been enlarged during the past year by short-term capital flows in response to higher interest rates, but it would still remain even if there had not been such flows. The danger that arises under these circumstances is that the superimposition of short-term capital movements upon the hard-core payments deficit might create the impression of a more serious payments problem than actually exists and thus weaken confidence in the dollar. In this setting, short-term capital movements are disequilibrating and may tend to snowball in size. Clearly, one longer-run lesson to be learned from recent experience is that the preservation of freedom for independent monetary policy adapted to domestic conditions requires fundamental correction of the imbalance in our international payments position. Detailed analysis of our balance of payments lies outside the scope of this paper. But it should be noted that the recent evidence of determination on the part of the United States government to effect the necessary corrections is most encouraging.

We may confidently assume that essential balance will in time be restored in our international accounts, but even this achievement would only lessen rather than solve the problem with which we are concerned. With our assistance, our allies among the major trading nations of the western world have at last succeeded in restoring convertibility of their currencies for both financial and trade settlement purposes. Unrestricted currency convertibility is an integral part of the world economy we have attempted to build, an economy in which there should be minimum interference with the allocation of productive resources to their most efficient uses. But free currency convertibility implies a growing international financial market, as noted

earlier, and the likelihood of increasingly sensitive response of private funds to interest rate differentials among national capital markets. In this setting will it be possible for central banks to pursue independent monetary policies geared to domestic economic requirements? If central banks are to be limited in their freedom to bring about credit conditions and interest rate patterns that may be out of line with those in other major countries, what alternatives for effective domestic policy may be found? What opportunities exist for cooperation among the monetary authorities of the principal countries to provide a measure of autonomy for domestic monetary policies within the framework of unrestricted private capital movements? Let us see what lessons can be drawn from our recent experience.

In the first place, it seems clear that central banks should have an open mind toward experimental techniques that might promise to help in achieving domestic policy ends while minimizing international repercussions. For example, some economists have argued that longer-term rates of interest have remained too high during the present recession, creating an obstacle to the stimulation of residential construction and other activities financed with long-term funds. Without passing judgment upon the validity of the argument as it applies to the present situation, we can at least ask if there are techniques the Federal Reserve System might employ to flatten out the yield curve. That is to say, if the central bank should conclude that longer-term rates of interest are higher than the state of the economy warrants, is there some way in which longer-term rates could be brought down without at the same time driving shorter-term rates lower and, thus stimulating short-term capital outflow?

This line of reasoning, of course, leads us to the Federal Reserve's famous "bills only" or "bills preferably" policy. It has been suggested that if the Federal Reserve System were willing to abandon its limitation upon open market operations, which confines these operations to short-term securities, it might be possible to buy long-terms while selling short-terms in sufficient size to have a significant effect upon the yield curve. No one familiar with all of the ramifications of this question would be willing to assert categorically that operations of this sort would be successful or, if successful, necessarily beneficial. But perhaps they should be tried in order to determine if they would be effective. What is fundamental here, in any case, is not that this particular innovation be made but that the central bank realize that the new circumstances in which it finds itself require a willingness to innovate if it is to continue to mount an effective policy. Federal Reserve operations during the past several months do, in fact, suggest willingness to innovate.

A more important lesson of the past few years, applicable not only in this country but in most major countries abroad, is that too much reliance has been placed upon monetary policy as an instrument for economic stability. Our Federal Reserve authorities have warned repeatedly that monetary policy is of limited effectiveness in dealing with inflationary or deflationary pressures, and that monetary policy is most effective when employed as one part of a carefully conceived public policy mix. It is unfortunately true, however, that fiscal policy and debt management policy have been neutral or actually perverse more often then they have been cooperative as counter-cyclical influences.

The failure to develop other public policies, particularly fiscal policy, as a precise and flexible instrument for economic stability has, among other undesirable consequences, thrown a wholly unreal burden upon monetary policy. Certainly an important reason for the wide fluctuations in market rates of interest during the past few years has been the fact that monetary policy has not only been doing its job but often has been compensating for inappropriate fiscal policies. To be specific, interest rates need not have gone as high as they did in 1959 if it had not been for the huge government deficit at a time of economic boom. In the present recession, monetary policy would not have to be so easy — or interest rates so low — if the economy were getting an assist from a significantly large government deficit.

Simultaneously, the major countries abroad have also placed principal reliance upon monetary policy. When, as during the past year, the business cycle gets out of phase and recession here coincides with booming conditions in many countries abroad, the unduly heavy reliance upon monetary policy results in interest rate differentials much larger than would arise if fiscal policy were carrying more of the public policy load. And let it be noted that the resulting outflow of funds problem in this country has its counterpart abroad. In several countries of Western Europe, the flow of funds out of this country into their financial markets has seriously interfered with their efforts to control credit and limit inflationary pressures.

As is usually the case in economic matters, the prescription to achieve a more balanced monetary policy-fiscal policy mix is more easily stated than achieved. The difficulties in the way of developing flexible tax and expenditure policies so that fiscal action might be more promptly responsive are truly awesome. But the new world of convertible currencies and open economies in which we live demands that improved fiscal policies be developed. It probably will no longer be possible to vary monetary policy over the range from restraint to ease in which it has moved in the past. If we are to have both an effective domestic policy and an unrestricted international capital market, it is necessary here and abroad that fiscal policy pick up some of the burden that monetary policy will no longer be able to carry.

A final lesson which, hopefully, we have learned from recent experience, is that our arrangements among central banks and the International Monetary Fund are becoming increasingly obsolete. The fact that a free international financial market has been created through which private funds may be moved without interference from one country to another does not necessarily imply that the distribution of gold reserves among nations should reflect all of these financial flows. In fact, it is likely that international currency stability and freedom for short-term capital movements are fundamentally incompatible in the longer run if the central banks involved automatically convert exchange accruals into gold.

We noted earlier that the risks of an inappropriate Federal Reserve policy probably were nominal this time around because of the size of our remaining gold reserves, the still firm confidence in the dollar, and the fact that international short-term capital movements have not yet grown to massive size. There is serious question in my mind, however, that we should rely upon these factors as bulwarks for the future. It is clearly in the interest of all the major free world powers to develop mutual defense arrangements for their several currencies. Through these arrangements, perhaps centered upon the International Monetary Fund, it would be possible to protect any country's gold reserves from the disruptive influence of short-term capital movements and, by so doing, protect the international financial mechanism from the sort of speculative orgies which have been so devastating at times in the past. And through the offsets to short-term capital flows that such arrangements would provide, the latitude for effective monetary policies aimed at domestic economic conditions would be greatly enhanced.

In my remarks I have attempted to suggest the direction in which we should move rather than the precise course we should follow. The lessons of recent experience seem clear to me insofar as they point to general conclusions. But the working out of the specific policies — whether in the fiscal area, in our international financial arrangements, or in the techniques of Federal Reserve operations — would take me far afield and, in any case, would be exceedingly presumptuous.

There is one observation with which I would like to conclude these remarks. The limitations upon domestic monetary policy in our new world of open and free economies have suggested certain policy adaptations. But as I review these adaptations — more imaginative Federal Reserve policy, more flexible fiscal policy, closer international financial cooperation — I am struck by the fact that these are directions in which we should have been moving in any case. Once again we have evidence of the value of free markets. So long as inconvertible currency arrangements interfered with the development of a broad international financial market, we were spared the consequences of our foolishness or inadequacies. We are no longer so protected, and we now have ahead of us the challenging need to develop the wiser policies that our position in the world demands of us.

AGRICULTURAL PROBLEMS AND POLICIES IN THE EUROPEAN ECONOMIC COMMUNITY*

*Joseph H. Humphrey***

SECTION I
THE CHALLENGE OF AGRICULTURE IN THE EEC

INTRODUCTION

I suppose that for Americans, the Common Market is thought of as an industrial phenomenon, a sort of vast merger of the industrial economies of the six nations comprising the European Economic Community. Certainly, to think of the Common Market in these terms sounds rather glamorous and exciting. But if we wish to know why the Common Market is what it is, we must look to the very basic problems that agriculture presents to a modern industrial economy, and more specifically in this case, to the problems that agriculture will present to a Common Market embracing six highly industrialized nations. The success of the EEC to a large extent will lie in its collective solution to the postwar problems of European agriculture.

BASIC PROBLEMS OF POSTWAR EUROPE: LOW INCOMES AND UNSTABLE PRICES

Specifically, postwar problems of European agriculture boil down to two points: first, the low level of incomes derived from agriculture as compared with other sectors of the economy, and second, the instability of agricultural prices.

Low agricultural incomes can be traced back to two sources. First, supply of agricultural products has not been able to increase as much as it could because productivity is limited by the fragmentation of farms, and by the lack of technical knowledge and capital for machinery and fertilizers. Second, it has been hard to expand demand for agricultural goods because of the difficulty in increasing market outlets, and even where demand has risen, an increasing part of expenditures on foodstuffs has tended to be spent on the processing and distribution of the products and a decreasing part on the products themselves, resulting in a lower proportionate rise in national income going to farmers.

Another contributing factor to low agricultural incomes has been the reluctance of many small farmers to leave their farms for more productive work in the cities. Although farm population in postwar Europe has declined, the decline has not been sufficient to allow agricultural incomes to move up on a parity with other sectors of the economy.

Agricultural price instability has been a major factor leading to wide fluctuations in farmer incomes. This can be traced to variations of annual output due to weather factors; to the inelastic demand curve for most foodstuffs; and to the independent producer response to shifting prices (which results in miscalculations as to the size of the demand with the consequence that output and demand will be in line more by chance than by calculation).

Western European countries responded to these problems by introducing a variety of national measures for stabilization and protection of markets for primary products. These measures are designed to insure to the domestic producers of a given product a more stable price for their output than that which would result from a completely uncontrolled market for the product. In particular, the governments of the Six have instituted programs of state intervention (in the form of import restrictions, customs duties, production subsidies, guaranteed prices, state trading, etc.), plans for "structural reform", and schemes of credit and investment assistance and technical advice. The danger of state-supported agriculture lies in the fact that over-protection of agriculture may well encourage overproduction, and this would impose serious limitations on price policy as a means of supporting farm incomes. The solution of this problem is crucial to the future of EEC agricultural policies.

OBJECTIVES OF THE EEC AGRICULTURAL POLICY

In order to understand how the EEC proposes to tackle these problems we must first look at the guiding philosophy laid down by the

* This paper is a summary of a paper delivered before a seminar on European Organizations at the University of Michigan Law School.
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Treaty of Rome. Article 39 states the objectives of the common agricultural policy:

"(a) to increase agricultural productivity by developing technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, particularly labor; (b) to ensure thereby a fair standard of living for the agricultural population, particularly by raising the individual earnings of persons engaged in agriculture; (c) to stabilize markets; (d) to guarantee regular supplies; and (e) to ensure reasonable prices in supplies to consumers."

The application of the principles stated in Article 39 will be better understood if we keep in mind the following statement found in the *Third General Report of the Activities of the Community* by the EEC Commission (p. 170):

"Account should be taken of the fact that the conditions of production and characteristics of farms in the Community differ from those in the extra-European countries which are large-scale agricultural exporters. In addition the prices of agricultural products on the world market are still frequently distorted by artificial measures. This is why, generally speaking, these prices cannot be at the same level within the Community as that at present obtaining on the world market, but must be stabilized at a higher level."

The translation of this protectionist view into concrete policy measures will be discussed shortly.

SECTION II
AGRICULTURAL SOLUTIONS AT A COMMUNITY LEVEL

THE HEART OF THE COMMON AGRICULTURAL POLICY

Just a cursory examination of the agricultural policies of the Six must lead to the conclusion that a common agricultural policy in the EEC cannot aim simply at removing trade barriers between member countries.(1) Changes must be gradual so as to allow producers to adjust to steadily increasing competition. National protectionism cannot be abandoned, but must be replaced by a single system of protection until such future time when support will no longer be needed. This is to be accomplished by a) common organization of the market, b) removal of tariffs and quantitative restrictions, and c) institution of a common tariff. The ultimate aim is to institute a common organization of agricultural markets. The Treaty states (Article 40) that this common organization shall be established not later than at the end of the transitional period. Depending presumably on the product concerned, it may take one of three forms: a) common rules concerning competition, b) compulsory coordination of the various national market organizations, or c) a European market association.

From the third stage of the transitional period onwards(2), decisions concerning the introduction of one of these forms of common organization will be taken by a qualified majority vote in the Council (Article 43). Any member country opposed to the institution of a common organization may, however, insist upon guarantees that the interests of its producers will be safeguarded.

The "rules of competition," laid down in a special chapter of the Treaty, which concern restrictive practices by enterprises, dumping practices and state aids are not in general applicable to agriculture (Article 42). It is presumably for this reason that Article 40 provides for "common rules concerning competition" which would be specifically determined for agriculture. In drawing up such rules the main problem is to decide to what extent national measures of assistance to agriculture and export subsidies can be allowed to continue.

The second and third of the three forms of organization referred to would presumably mean the replacement of the various national measures of official intervention by measures common to all the Six countries. Price controls, subsidies, stock-piling and machinery for regulating imports or exports are specifically mentioned. The ultimate aim is to establish price conditions similar to those found in a national market. The concluding part of this paper will illustrate the divergence of views over the adoption of precise proposals for this common agricultural policy.

REMOVAL OF TARIFFS AND ABOLITION OF QUOTAS
(1) Internal Tariffs

The Six have agreed to a gradual removal

of quantitative restrictions (quotas) and tariffs on all agricultural products traded among themselves subject to the safeguard of a minimum price system. Tariffs are to be abolished over a transitional period of between 12 and 15 years, in 3 four-year stages, with the first reduction (of 10%) taking place on January 1, 1959.(3) By the end of 1965 they are to be less than half their level of January 1, 1957. The remaining tariffs are to be eliminated in the final stage according to procedures to be negotiated upon later. The Six still have room to maneuver after the first reduction of 10%, but the minimum reduction on any commodity is to be 25% by the end of the first period of 4 years and 50% by the end of the second period. There is also an allowance for an extension on specific tariff cuts of up to 2 years after the end of the first 4-year period. (4) In the case of food, tariffs generally play a less important role than other measures of agricultural protection, such as state trading, import quotas and domestic price supports, and may be suspended where other measures of this sort exist.

(2) Quantitative Restrictions

Tariff reductions would have little significance, however, if they could be offset by additional quantitative restrictions. The Six have provided for this with a rather complicated arrangement concerning import quotas. Member countries are bound not to introduce any new quantitative restrictions on trade between themselves or to make existing quotas more restrictive. They must undertake to convert bilateral quotas between themselves into global quotas open to all member countries and to increase them by stated amounts, or if there is no such bilateral quota a global quota must be established; in either case the global quota must in the first instance be at least 3% of the national output of the product in question. The first changes will take place at the same time as the first tariff reduction. Thereafter the global quotas will be increased by stages and will disappear at the end of the transitional period. For many agricultural products it seems likely that this relaxation of quotas will be of more effect than the reduction of tariffs. (See *Agricultural Policy in the European Economic Community* by P.E.P., pp. 13-14.)

In January 1959 the total of all quotas is to be enlarged by 20% compared with 1958 (and no individual product quota is to be enlarged by less than 10%). Similar quota increases are to occur in each of the following 6 years, and in each of the 4 years of the second stage. At the end of 10 years all import quotas are to be equal to at least 20% of the domestic production of the restricted item. Quotas are abolished once they pass the limit of actual importation. Although there is room for adjustment in special cases, all quotas are to be eliminated by the end of the 12-15 year transition period.(5)

TRANSITIONAL MEASURES TO CUSHION THE EFFECTS OF REMOVAL OF TRADE BARRIERS

(1) Minimum Import Prices

The aim of reduction of trade barriers is to compel producers to become more competitive and efficient, and to shift production of each commodity to the regions most fitted for it. To achieve these goals, however, the freeing of trade must come gradually so as not to injure the producers. This is provided for in the EEC Treaty by special provisions cushioning the impact of enlarged quotas and tariff reductions. (6)

In the transitional period, the most important measure is to be the system of minimum import prices (Article 44) under which a country which imports a given product can fix a minimum price below which it will not allow imports of that product. This provides a means by which a member country can continue to protect its domestic producers, in spite of the reduction of tariff barriers and elimination of quotas, if they are in danger of being underpriced by imports from other members.

The Treaty states that the minimum import price system shall not be used to such an extent as to impede the expansion of trade. It requires the EEC Commission to determine "objective criteria" for fixing minimum prices. These criteria shall take account both of "average national costs of production" and of the need to promote "the progressive improvement of agriculture and the adjustments and specializations necessary within the Common Market". The intention seems to be that minimum prices should be fixed sufficiently below "average production costs" to induce some shift from high-cost to low-cost production areas. In the Fall of 1960, a draft decision on the objective criteria for the minimum price systems was adopted by the Commission. For the purpose of fixing the levels of minimum prices the Commission made a distinction between products for which price guarantees exist in the various countries and those

for which such guarantees do not exist (for the latter, formation of prices depends on the free play of supply and demand within the member state). The level of the minimum price for products is to be calculated on the average price (weighted average of prices on a given, typical market or weighted average of the averages observed in accordance with the above principle). Finally, the Commission considered that it would not be necessary to apply the minimum price system all through the year. To justify recourse to minimum prices there must be a threat of a fall in the price of each agricultural product for which minimum prices are to be considered, and this threat must be the result of the progressive abolition of customs duties and quantitative restrictions on the product concerned.

The phrasing of the Treaty itself seems to make allowance for the possibility that minimum prices will vary during the transitional period, i.e., as the customs tariffs are gradually abolished, the minimum prices would be increased to a corresponding degree.

It is going to be difficult to prevent the minimum price system from giving rise to excessive protection. In the first place the statistical problems involved in calculating "average national costs of production" are almost insuperable, and it is therefore highly problematic whether any precise "objective criteria" can in fact be drawn up. In the second place, the pressure from national interests to replace one form of protection by another will be strong and may not easily be resisted, particularly as the determination of "objective criteria" requires in the first instance a unanimous vote in the Council of Ministers. The minimum price system constitutes a powerful means by which importing countries may to a large extent evade the effects of the reduction of import duties and restrictions.

Article 44 also states that at the end of the transitional period a survey shall be made of the minimum prices still in existence. It does not say that they shall necessarily be abolished at this stage; it declares that the Council of Ministers "shall determine the system to be applied within the framework of the common agricultural policy". This clearly leaves open the possibility that minimum prices will persist in some form or other beyond the transitional stage and may become a more or less permanent feature of agriculture in the European Economic Community. (See *Agricultural Policy in the European Economic Community* by P.E.P., pp. 14-15.)

(2) Countervailing Charges

The Treaty also mentions the use of a system of countervailing charges which may be applied to a product traded between two member countries when in the exporting country the product in question "is the object of a national market organization or of any internal regulation with equivalent effect, either of which affects the competitive position of a similar production in another Member State" (Article 46). This system may be used beyond the transitional period.

(3) Long-term Contracts

Long-term contracts constitute the second main transitional device which may be used until common market organizations are set up. Such contracts between importing and exporting countries of the EEC introduce stability into the prices and incomes received by primary producers. Under terms of these contracts, an importing government undertakes to purchase a set quantity of a product (for example, wheat in the Franco-German agreement of 1959) at a fixed price, from the exporting government. (However, there remains the possibility that under this device, too, discriminatory protection may be given to domestic producers at the expense of foreign producers.) The quantities involved in these contracts will be determined on the basis of the average volume of trade in the products in question between the contracting countries in the three years preceding the entry into force of the Treaty. The contracts are to provide for an increase in the previous average volume of trade but, partly as a safeguard for the interests of importing countries, this increase must be "within the limits of existing requirements, due account being taken of traditional trade currents". As for prices, such contracts "shall enable producers to dispose of the agreed quantities at prices progressively approximating to those paid to national producers in the home market of the purchasing country. This approximation of prices shall proceed as steadily as possible and shall be completed not later than at the end of the transitional period". (Article 45(2).) The long-term contract system applies to products in which there is state trading, and is likely to be adopted only for wheat and possibly sugar.

A trade report issued by GATT declares that the effectiveness of a long-term contract can be assured only if the member governments are

ready and able to control their trade in the commodity concerned to the extent necessary to carry out their governmental obligations to purchase and sell stated amounts within stated price limits. Long-term contracts "could be operated in such a way as to allow changes in world supply and demand to have their full impact upon the world price for, say, wheat, which would be operative for all the trade not covered by the importers' and exporters' guaranteed quotas. The world price could thus be used to help adjust supply to demand." (*Trends in International Trade*, a Special Study Report by GATT, p. 75.)

EEC'S COMMON EXTERNAL TARIFF

When the transitional period ends, the European Economic Community will present a common external tariff against imports from non-member countries. National tariffs will be brought into line with the common tariff over the transitional period by a series of reductions stated in Article 23. The first changes will be brought about before 1962.(7) In general the common tariff will be the arithmetic average of the present national tariffs. Annex I of the Treaty, however, gives lists of products for which maximum rates have been fixed, or for which the duties have already been fixed by mutual agreement, or will be fixed by negotiations. Most major agricultural products figure in List F — products for which duties have already been determined; others, including cheese, fats, oils and wine, are in List G — products for which duties are to be negotiated. (These Lists are found as annexes to the Treaty of Rome.)

Strict application of the common tariff might be seriously to the disadvantage of a country in cases where its own previous tariff was lower and where the product concerned is important either as a basic foodstuff or as a necessary element in the production of food for domestic consumption or for export outside the region. Article 25, paragraph 3, enables a country to continue such imports free of duty or at a rate less than the common tariff: "In respect of the products listed in Annex II of this Treaty," (Annex II is the list of agricultural products which includes virtually all home produced and imported agricultural products other than wool, skin, hides and silk), "the Commission may authorize any Member State to suspend, in whole or in part, the collection of the duties applicable or may grant to such Member State quotas at a reduced rate of duty or duty free, provided that no serious disturbance in the markets of the products concerned may result therefrom." Presumably there will have to be safeguards to prevent such concessions being used for cheap exports to other countries of the EEC.

The initial operation of the external tariff provisions will be in the following manner. The tariff on most products coming into the Common Market from the outside will be calculated on the basis of the average rate charged in the four customs areas — Benelux, France, Germany and Italy. This yields a somewhat higher average rate than if the rates were weighted according to the amount of trade engaged in by each country. Benelux imports over twice as much as Italy — the former is a low tariff, the latter a high tariff country. Germany imports somewhat more than France, and the former has a lower set of tariffs than the latter. Moreover, special clauses will further increase the average common tariff. For instance, a 10 per cent reduction in Italy's tariffs in 1956 will not be taken into account in formulating the average.

One of the consequences of belonging to the Common Market will be that no Member State can unilaterally modify its tariffs. This means, for example, that without the unanimous consent of the other member states, Germany could not lower its tariff on sugar below the 80 per cent level established for the Community as a whole.

Certain commodities have been placed on separate lists which prescribe the upper limit of the common tariff that will prevail after the Common Market is fully established. In most cases this limit is below the arithmetic average of the duties now imposed by the Member States. (See *Trends in International Trade*, a Special Study Report by GATT, pp. 10, 11 and 16.)

The development of a common external tariff by the European Economic Community is a matter of great importance to GATT because of its impact on world trade patterns in agriculture. Certainly GATT has recognized the benefits of integration of national economies in a customs union, because this will increase trade within the union while not raising new barriers against non-union countries. GATT favors customs unions provided duties and other trade regulations will not on the whole be higher or more restrictive than those previously in force. In a footnote to the text of *Trends in International Trade*, GATT points out this danger by asking "whether in all respects the proposed common tariff of the EEC is such that it is not higher

than 'the general incidence' of the pre-existing individual tariffs of the Six. In a number of cases duties for the common tariff have been fixed by mutual agreement rather than by computing an average(List F of the Treaty of Rome). Some of these are actually higher than an arithmetic average would be. Furthermore, the use of an unweighted arithmetic average for computing the common tariff may tend to produce an upward bias, if as appears to be the case in most instances, the largest importers among the Six have the lowest tariffs." (p. 116.)

SECTION III
THE DRIVE TOWARDS A COMMON AGRICULTURAL POLICY

COMMON ORGANIZATION OF THE AGRICULTURAL MARKET

The core of the EEC agricultural policy centers around a common organization of the agricultural market which will differ with each product. There is the possibility of common rules of competition, or of the compulsory coordination of the various existing national market organizations, or even of a single "community" market organization for a single product. Each of these forms may make use of production and marketing subsidies, price controls, stockpiling arrangements, etc. The EEC Commission has proposed that within the space of six years (starting from January 1, 1950), all major agricultural products will be under a common market organization, and their prices harmonized at a common level. This six year goal has certain exceptions for those products which will take less time to bring under a common policy (such as beef and veal), and those which will take a longer time (such as wine).

A "European" market organization is proposed by the Commission for cereals, dairy products and sugar.(8) Compulsory coordination of the various national market organizations is proposed for beef, veal, pig-meat, poultry and eggs. Common rules concerning competition are recommended for fruit, vegetables and wine.(9)

A PRODUCT-BY-PRODUCT ANALYSIS

(1) Cereals

The basic problem faced in this area is the existing accumulation of large wheat surpluses in the major producing countries due to the priority of cereal price support and the fact that increased wheat consumption is a dim possibility. The solution proposed is the establishment of a European Cereals Office to maintain prices paid to producers at the level of "target prices", pre-established by the Commission, by controlling imports coming from outside the Community, and through intervention on the domestic market. Instead of assessing tariffs on extra-Community imports, a system of levies would be imposed to make up the difference between the (lower) world price and the target price. From October 1, 1967 these levies must be the same in all Community countries. For intra-Community trade the Commission suggests that member countries replace their customs duties by a system of levies to be applied from January 1, 1962 onwards. This system would be based on the differences between the prices paid in the importing country and those paid in the exporting country. In order to encourage trade in these products within the Community, there will be some reduction of rates levied inside the Community. The levies would also be reduced within the Community as the steps taken to obtain alignment lead to reductions in the margin of difference between prices.

The European Cereals Office would directly intervene in the market through a rather complicated system of purchases and sales, the basic operation of which would be as follows: on the basis of the annual target price, the Commission would calculate monthly target prices, taking account of storage costs and interest charges. Wheat would then be offered throughout the year to the Cereals Office at an intervention price to be fixed; this price would be 5 to 7 per cent below the target price. (For earlier proposals on support purchasing arrangements, see the *Third General Report on the Activities of the Community* by the EEC Commission, pp. 171-172.)

(2) Coarse Grains

Barley, oats, maize, etc. would also come under the European Cereals Office, and the main provisions are similar to those for wheat.

A Stabilization Fund, based on revenue from import levies, would partially finance the operations of the Cereals Office, however, part of the proceeds of the import levy on coarse grains would be diverted to the Stabilization Fund for livestock products.

(3) Dairy Products

The dairy sector has witnessed an increase in production due to improved techniques and the stimulation of price supports. The consequences of this situation have 1) affected the domestic marketing problems by increasing the gap between production and outlets, and 2) disturbed international trade by unnecessarily stimulating exports and by unnecessarily reducing imports. Unfortunately, it is the importance of milk sales in the receipts of small producers that makes it difficult to lower guaranteed prices in order to hold back the milk supply.

The methods used to deal with these problems will include a European Milk Office to be set up on lines similar to the Cereals Office. The support purchasing arrangements would be the same as those for wheat.

Production controls would be utilized to restrain milk surpluses, and consumer subsidies for butter are forecast to encourage sales and to provide outlets for milk surpluses.

The system of import levies and import licensing on trade with non-member countries is the same as that outlined for wheat. Levies to be applied to trade inside the Community will be introduced not later than January 1, 1962. After this date the level of these levies will be established in close relation to the target price for milk. To encourage internal trade there will be a reduction in the levies.

For the alignment of prices of dairy produce, the Commission has suggested a minimum table which means that in the crop year October 1963-1964 there can be, for the first time, a common target price for the production of milk. Each year the Commission will submit proposals on the alignment of prices for dairy produce.

Contributions to the Stabilization Fund for milk products will come from import levies and government contributions (the only sector which specifies government support). Producers may also be levied upon if these other sources of funds prove insufficient. The Milk Office will be able to provide "equalization payments" on exports of dairy products to third countries in order to enable producers to compete on world markets (and to compensate them for higher production costs).

(4) Sugar

Several countries of the Six (Germany, Belgium and Italy) have shown growing sugar surpluses, thus causing marketing difficulties similar to those discussed in wheat and dairy products. Commission proposals in this sector involve basically what we have seen before, i.e., a European Sugar Office, target prices, support purchasing arrangements similar to those for wheat, extra-Community and intra-Community import levy systems similar to those for wheat, and a Stabilization Fund.

Target prices would be pegged by means of fixed prices based on sugar "ex-factory". Such prices would apply only to quantities which can be absorbed on the domestic market.

The mechanics of fixing the target price are intricate. If the volume of production is such that the market has to be relieved by exports or through other channels, losses incurred through exports or other uses of sugarbeet will be divided among all the factories and all the producers of sugarbeet. In this case the fixed price for sugar would be applicable to the quantities consumed on the internal market, while the price paid for the surplus would be that of the world market. At the end of the season, a Special Guarantee Fund, set up for the purpose, would effect a general equalization of prices among the factories on the basis of a weighted average of the fixed prices for the quantities of sugar consumed on the internal market and the prices obtained for those exported or otherwise disposed of. If the EEC Commission proposals in this area prove inadequate to discourage a surplus production, the use of production quotas will be considered. (See the *Third General Report on the Activities of the Community* by the EEC Commission, p. 173.)

(5) Beef, Veal and Cattle

These products involve the use of the second type of common market organization, namely, the compulsory coordination (not unification) of national market organizations, according to the earlier proposals of the Commission. Now, however, the Commission has recommended the establishment of European Offices for these products. It is not known at the moment just what sort of support purchasing programs will be used.

The Commission has not put forward proposals on the alignment of prices. It considers that this alignment will be brought about automatically by the application of its plans for the aboli-

tion of all measures hampering trade at the internal frontiers and by the gradual working out of the common commercial policy towards non-member states.

The Commission considers that intra-Community trade can be given complete freedom before the beginning of 1964. It suggests a speed-up in the abolition of duties by reducing them by 25 per cent each year, beginning on January 1, 1961.

Domestic prices will be set above world prices by placing tariffs on third-country imports or by import levies to raise import prices to certain standards, if, as a result of uncommonly low prices on the world market, the price for imported meat plus customs duty is below the minimum import price. The common external tariff is to come into force on January 1, 1964 at the latest. To make it possible to institute a common market on January 1, 1964, a minimum price will be fixed by the various governments from January 1, 1962 onward; this minimum import price will have to be common from January 1, 1964 onward. Imports of frozen meat will be subject to a system of import certificates.

(6) Pig-meat

Commission proposals in this field now favor a switch from the compulsory coordination of the national market organization to a unified "European" market organization under a European Office for Pig-Meat. Support purchasing programs remain to be worked out.

There are no plans to align prices, for the same reasons stated in the beef and veal sector. It appears that the Commission may still arrange for certain quantities of pig-meat to be removed from the market and temporarily stored in order to stabilize prizes.

A system of levies based on the different price levels for pig-meat traded within the Community will be introduced during the 1961-1963 period. From January 1, 1964 these levies will be replaced by charges based on the differences in the cost of feeding, coupled with a customs duty which is also to be gradually eliminated.

A sliding-scale levy arrangement will be applied on trade with non-member countries. It is based on the difference (until January 1, 1964) between the price for pig-meat on the markets in each country and the world market price. A reduced duty will at the same time be levied in order to counterbalance the different conditions of production which do not stem from feeding costs. From January 1, 1961 a minimum import price will also be introduced as a safeguard. These measures will be applied jointly. As soon as the import price — including levies and duties — falls below the minimum import prices, levies will be increased proportionately.

Compensatory payments on exports and any operations on the domestic market are financed by a Stabilization Fund which obtains its revenue from import levies on pig-meat, and also from part of the import levies on coarse grains.

(7) Poultry and Eggs

Contrary to its earlier proposals, the Commission now desires to establish a unified market organization under a European Office for Poultry and Eggs. Whether this will include intervention in the domestic market remains to be seen.

There are no price alighment schemes, for the same reason stated in the beef and veal sector.

On January 1, 1961 a levy system will be applied to trade inside the Community. The levies will be reduced and eventually abolished as alignment of coarse grain prices inside the Community progresses. In addition to this levy, there will be a small import duty which is later to be abolished.

Trade with non-member countries will be based on the same principles as those for pig-meat, except that the sliding-scale levy will be based on the differences between the prices for coarse grains in the member states and prices on the world market.

(8) Fruits and Vegetables

This sector of agriculture falls under the third type of common market organization, namely, the "common rules concerning competition". Here the emphasis is on common standards of quality, to be formulated during the transitional period. Standardized products would be allowed free movement within the Community. The Commission will also promulgate common rules of competition.

Although there will not be a Stabilization Fund, arrangements could be made to stabilize

the market in times of surplus through a mechanism which would allow certain categories of produce to be withdrawn from the market.

There are no price alignment plans, for the same reasons stated in the beef and veal sector.

The quotas on intra-Community trade are to be abolished when the standards for quality come into force, and it will not be permissible to invoke Article 44 of the Treaty, which regulates introduction of minimum prices. Before July 1, 1963 the Commission will submit to the Council of Ministers common rules for competition. Subsidies to traders and producers must be abolished before July 1, 1964.

The common external tariff will have to be applied from January 1, 1967 onwards. The standards of quality and packing and the provisions governing competition which are applied to trade within the Community will be equally applicable to imported goods.

(9) Wines

The arrangements here seem to combine "common rules of competition" with a certain degree of market intervention. Sales would be spread out over a short-term period of time by partial storage of harvests under guarantees from a Stabilization Fund for wine. (Storage, export or distillation of surpluses would also be financed by the Fund.) Long-term measures organized by the Commission will be directed towards harmonizing production with demand (for example, by clearing vineyards, by setting up a common classification of the different varieties of wines, by eradicating varieties that are forbidden and replanting with other varieties of vines, and by the supervision of wine nurseries and the delimitation of wine-growing districts). Various measures will also be taken to improve quality. For example, a joint set of rules will be drawn up before January 1, 1963 for the treatment and preparation of wines.

Again, there are no proposals on alignment of prices, for the same reasons stated in the beef and veal sector.

Wines which are graded will be entirely free for purposes of intra-Community trade. The other categories of wine will come under the trading systems which result from application of the general rules on the subject contained in the Treaty.

External protection is assured by means of the common import duty which will come into force on January 1, 1970. If necessary, quantitative restrictions may be applied to the import of wines if home production is subject to restrictions.

When the long-term plans for wine are approved by the Council of Ministers, they will be financed by a Stabilization Fund. Capital for the Fund would be obtained by levies on wine producers rather than through import levies.

ORGANIZATION OF STABILIZATION FUNDS

Stabilization Funds are planned for all products, mentioned above, except for fruits and vegetables. These Funds would all be part of a European Agricultural Guarantee Fund administered by the Commission. Although accounts would be separate, there is the possibility of intra-fund transfers and even of transfers from the Guarantee Fund to the Fund for Structural Improvement. A qualified majority in the Council of Ministers, acting on proposal from the Commission, would be a requisite for such transfers.

ESTABLISHING TARGET PRICES AND ANNUAL SUPPLY PLANS

Acting on the recommendations of the Commission, the Council, by qualified majority, will lay down the criteria for calculating target prices of wheat, coarse grains, sugar and milk. Each year the Commission will propose the target prices based on these criteria; these target prices are considered as accepted by the Council unless it decides otherwise within a fixed time limit. The Commission then fixes or calculates the intervention prices and the minimum import prices. Annual supply plans for cereals, dairy products and sugar must be adopted by a qualified majority of the Council of Ministers upon proposal by the Commission.

TRANSITIONAL MEASURES COROLLARY TO BRINGING ABOUT A COMMON MARKET ORGANIZATION

Since the transitional period for agriculture (6 years) is considerably shorter than the overall transition period of 12 to 15 years envisaged in the Treaty of Rome, vigorous action must be taken in order to harmonize markets within the time allowed. The Commission's intent is that all measures necessary to create a common mar-

ket for the chosen products, including tariff removals and abolition of quantitative restrictions, should be completed within 6 years. This includes abstention by Member States from increasing price differentials among themselves, and cooperation to gradually adjust prices in accordance with Commission proposals. Eventual unification of national marketing organizations necessarily implies their closer cooperation. Finally, the Commission is discouraging bilateral agreements with third countries extending beyond the transitional period.

SECTION IV
STRUCTURAL REFORM

So far we have examined the various measures that are to be undertaken by the EEC in order to establish a common organization of the agricultural market. In the concluding part of this paper we will focus attention on a fundamental problem that is impeding the development of a common agricultural policy.

The promotion of structural reform strikes at the heart of the imbalance in productivity — namely, an excessive number of small farms with low productivity per man. Structural reform entails the regrouping of fragmented holdings and the amalgamation of small farms, in other words, the creation of efficient farm units. In order to accomplish this reconstruction, large funds are needed. In general, we might say that the creation of the EEC itself will stimulate increased investment in the agricultural sector, especially since agriculture falls under the Treaty provisions dealing with the free movement of capital, labor and services. It was first considered that the European Investment Bank (provided for by the Treaty) might help in providing capital, but a recent EEC Commission recommendation has stressed the need for a separate fund to provide additional finances for structural reform. This Fund would be administered by the Commission and would be financed by contributions from Member Countries; possibly even from the European Guarantee Fund.

The Commission places great emphasis on structural reform as the key to facilitating transition towards a Common Market. An elimination of the differentials in agricultural structures would contribute towards a leveling-off of production costs. Even more important is the desire to modernize agriculture so that it may "partake in the accelerated rhythm of industrial development in the Community". The best economic and social form of agriculture in Europe has proved to be the general farm worked by one family. It is therefore important to put the family enterprise on a healthy basis and transform it into a modern farm. The increased industrialization of rural regions will be an appreciable help; it will make it possible to offer more remunerative employment to farmers who have abandoned farms which are economically unprofitable. (See the *First General Report on the Activities of the Community* by the EEC Commission, pp. 71-72.)

The Commission also stresses the interdependence of market and price policy and structural reform. Improvements in the latter will lead to increased productivity. This will cause problems since productivity is outstripping consumption with the result that there are surplus disposal problems. This may be mitigated by making a thorough study of the possibilities of expanding production and of the trends of consumption, making possible an estimate of the direction in which production should be developed in the future and consequently what market and price policies should be adopted. (Such a study is presently going on.)

The ultimate goal of structural reform in agriculture (implicit in what has been said) is to enable capital and labor to maintain earnings comparable with those they would obtain in other sectors of the economy.

CONCLUSION

As might be expected, the EEC agricultural policy has come into sharp conflict with the various existing national attitudes over agriculture. A heated debate in the European Parliament in the Fall of 1960 gave rise to a draft resolution by the Parliamentary Committee which modifies to some extent the EEC agricultural policy. The former differs from the latter by advocating harmonization of internal agricultural prices at a common level based on the existing prices in the EEC country which is the biggest consumer of agricultural products, namely, Germany. The draft resolution also opts for setting up the European Offices (for the various agricultural products) after a transitional coordination phase for the national market systems; finally, it favors a rather rigid system for regulation of imports from third countries, namely, the granting of import licenses based on an annual balance sheet. This, in effect, would establish quotas in relation to an annual balance which takes into

account the evolution of production and requirements.

On October 14, 1960 the European Parliament adopted, in the main, the draft resolution of the Parliamentary Committee. It remains to be seen to what extent the draft resolution will actually modify the basic approach to a common agricultural policy.

APPENDIX

TIMETABLE FOR THE CUSTOMS UNION OF THE EEC*

Removal of Internal Tariffs

First Stage: 4 to 6 years (Jan. 1958 to Dec. 1961 – max. Dec. 1963)

I–January 1, 1959:
All duties in force January 1, 1957 must be reduced by 10 per cent

II–18 months later:
Reduction of at least 5 per cent of original tariff on each item, and 10 per cent of total customs receipts

III–18 months later:
Reduction of at least 5 per cent of original tariff on each item, and 10 per cent of total customs receipts

IV–End of the first stage:
All basic duties will have been reduced by 25 per cent

Second Stage: 4 to 5 years

V–After 18 months:
Reduction as in II

VI–18 months later:
Reduction as in II

VII–One year later:
Reduction as in II

VIII–End of second stage:
All basic duties will have been reduced by 50 per cent

Third Stage: 4 years

IX–End of third stage:
Remaining tariffs must be eliminated; timing for tariff dismantling to be fixed later

Elimination of Internal Quotas

First Stage: 4 to 6 years (Jan. 1958 to Dec. 1961 – max. Dec. 1963)

I–January 1, 1959:
Bilateral quotas now granted to any Member State must be extended to all members. Quotas must be increased by 20 per cent in total value and at least 10 per cent for each product

II–One year later:
Quotas must be increased by 20 per cent in total value

III–One year later:
Increase as in II

IV–End of the first stage:
Increase as in II. Quotas must not be less than 5 per cent of national output for each product

Second Stage: 4 to 5 years

V–After one year:
Increase as in II

VI–One year later:
Increase as in II

VII–One year later:
Increase as in II

VIII–End of the second stage:
Increase as in II; quotas must not be less than 15 per cent of national output for each product

Third Stage: 4 years

IX–After one year:
Increase as in II

X–One year later:
Increase as in II; quotas must not be less than 20 per cent of national output for each product

XI–End of third stage:
All internal quotas must be removed

Setting Up Common External Tariffs

First Stage: 4 to 6 years (Jan. 1958 to Dec.

*Subject to acceleration in accordance with the decision of the Council of Ministers to seek speedier implementation of the Treaty of Rome.

1961 – max. Dec. 1963)

I–End of the first stage:

Tariffs on all items on which the January 1, 1957 duties vary by no more than 15 per cent from the arithmetic average are to be replaced by the common tariff for each item. Where the basic duties vary by more than 15 per cent from the average, the difference between the basic duties and the common tariff for each item must be reduced by 30 per cent

Second Stage: 4 to 5 years

II–End of the second stage:

The difference between the basic duties and the common tariff must be reduced by another 30 per cent

Third Stage: 4 years

III–End of the third stage:

The common tariff on imports from non-Community countries is to be fully established

NOTES

(1) Note the protectionist aspect of Articles 39, 40, 42, and 44 (Treaty of Rome).

(2) The first two stages of EEC's transitional period will last up to the end of 1965 at the earliest, unless the present proposals for shortening the transitional period are adopted. Even during the first two stages, a qualified majority vote may, under the Treaty (Article 43), be sufficient to introduce a "common organization" (Article 40(2)) in place of national market organizations

"(a) if the common organization offers to Member States who are opposed to this measure and which possess a national organization of their own for the production concerned, equivalent guarantees regarding the employment and standard of living of the producers concerned, due account being taken of the time-factor in respect of possible adjustments and of necessary specifications; and (b) if such organization ensures for exchanges within the Community conditions similar to those existing in a domestic market." (Article 43(3)).

(3) See Appendix for the timetable for customs union reduction of tariffs, elimination of quotas, and setting up of common external tariffs.

(4) *Ibid.*

(5) *Ibid.*

(6) Articles 14(5), 14(6), 15(1), and 17(4) are cushioning provisions for tariff reductions; Articles 33(5), 36, 37(4), 37(5) are cushioning provisions for enlarged quotas.

(7) See Appendix for schedule of the common external tariff.

(8) A European Bureau will be established in 1961 for these products. National marketing organizations will eventually be associated with the Community Bureaus. Advisory Committees will begin work in 1961. The Commission will present to the Council of Ministers (before January 1963) a proposal concerning European Funds which are to begin functioning on July 1, 1963. The Directors Committee (Note 9 infra) will be established before January 1, 1961. (*EEC Community Information Service Bulletin*, July 1960, p. 5)

(9) The proposals provide for the establishment of consultative committees for all products; these committees will be composed of representatives of the areas concerned. "Directors" Committees will be set up, consisting of persons playing a leading part in the establishment of marketing organizations in the Member States. These Directors Committees will assist the EEC Commission in working out its policy and will help ensure effective coordination between the various bureaus.

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RESALE PRICE MAINTENANCE IN THE UNITED STATES

Bruce Morgan[*]

In general terms, resale price maintenance is an arrangement by which the producer or, in some cases, a distributor of a product which is identifiable by means of a trademark or brand name may dictate the minimum price below which a purchaser may not go in subsequent resale. Although such results may be brought about in a number of different ways, the most notable being refusal on the part of the initial seller or distributor to sell the product to a retailer who goes below the specified minimum price, the issue primarily under consideration here will be those arrangements involving some form of contract or enabling legislation. The concern will be with price maintenance only — no attention will be given to minimum markups.

From the *Dr. Miles*(1) decision of 1911 until the early 1930's, resale price maintenance by means of contract was held to be unequivocally illegal under the terms of the Sherman Antitrust Act. A minimum could still be imposed on resale prices, but only under certain restrictive conditions,(2) and prices could be maintained if sale was through *bona fide* retail agents, as in the case of General Electric. These exceptions, however, were too limited to be of much use to most manufacturers and distributors. Initially it was the manufacturers who led the way in attempts to persuade Congress to exempt resale price contracts from the antitrust laws, but, as new forms of distribution, characterized by large volume and rapid turnover with low margins, became increasingly prominent, it came to be of more and more importance to the manufacturers to maintain the goodwill of these mass distributors. Since the appeal of such outlets clearly lies in their low prices, resale price maintenance contracts are normally against their interests. Thus the initiative in the drive for such legislation passed mainly to organizations representing small-scale, low-volume retailers, i.e., those who saw their position threatened by the growth of the mass volume outlets.

The attempts at Congressional sanction of resale price maintenance contracts, the first of which took place a few years after the *Dr. Miles* decision, met with no success; hence, the proponents turned to the state legislatures. The first state act was that of California in 1931; this act being simply permissive in nature. Price maintenance contracts were legal and binding upon those who actually entered into such contracts. This, however, was insufficient to bring resale price maintenance into being in that the low-price distributors could exempt themselves simply by not entering into such contracts. The result was an amendment to the 1931 act, enacted in 1933, which was the first of the so-called nonsigners clauses. A contract specifying a minimum price, entered into by a manufacturer or distributor with any one retail outlet, automatically became binding upon all other outlets in the state upon being notified of the contract. The only conditions under which a retailer could then cut his price on the product below the specified minimum were to be in cases of close-out sale, sale by court order, and the like.

The California law became one of two main patterns followed by states subsequently passing such laws, the other being a model suggested by the National Association of Retail Druggists, the most active of the retail groups advocating such legislation (their aim being a 50 per cent markup on as many items as could possibly be achieved). The primary difference between the two patterns was that the California act allowed such contracts between wholesalers and retailers as well as between manufacturers and retailers, while the N.A.R.D. model did not. The latter draft, on the other hand, explicitly allowed producers to contract not to sell to price cutters or to those who aided them. All the state acts, like the later Federal enactments, required that products under resale price maintenance contracts be in "free and open competition" with similar goods produced by other manufacturers. The arrangements were required to be vertical, i.e., manufacturers could not enter into contracts with other manufacturers, wholesalers with other wholesalers, or retailers with other retailers.(3) It might be noted that to this day the precise limits of this proviso have been something less than fully explored. For example, there is the problem which arises when a manufacturer operates retail outlets in competition with independent outlets with which he has contracted a minimum resale price. This issue was to some degree settled in the *McKesson and Robbins* case,(4) where it was decided that such contracts are illegal when the degree of competi-

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tion between the manufacturer and the distributors subject to a resale price maintenance agreement with him is substantial. Even this decision is quite recent.

Enforcement of such contracts is entirely private.(5) Suits for injunctions against price cutters and for damages may be brought by the manufacturers (or wholesalers) or by retailers in competition with the price cutter. Enforcement, however, has proved quite difficult, especially since damages are almost never awarded. Litigation is costly and often prohibitive for the small retailer. Before bringing suit, the prospective plaintiff must weigh carefully the cost of doing so against the advantages to be derived thereby. Indeed, the costs are often more than the retailer associations are willing to undertake, especially if the manufacturer can be pressured into bringing suit. It is interesting to note that in all the major cases involving resale price maintenance, suit was indeed brought by the manufacturer rather than by other distributors. There are further requirements which make it even more difficult to enforce such contracts. For a retailer to bring suit against another retail outlet, it must be shown that the plaintiff is in sufficiently close competition with the price cutter such that he can reasonably be considered to have been damaged thereby. The courts have tended to interpret this requirement quite narrowly in the sense that such damage must be beyond all possible doubt. For the manufacturer, there is the so-called "clean hands" proviso, i.e., the court must be convinced that the plaintiff is a conscientious enforcer of his contracts. The purpose of this requirement is to provide a safeguard against any discrimination on the part of the manufacturer as to his policy towards different types of retail outlets. This is in recognition of the fact that there is an incentive for manufacturers to practice such discrimination. They may attempt to maintain resale prices among small retailers in order to make the product appear more attractive when sold through cut-rate outlets.(6) In other words, it may be possible for a manufacturer to obtain the best of two worlds through having his product attractively displayed by the small-scale merchants and meanwhile achieving low-price mass distribution.

Such, then, is the essence of the law regarding resale price maintenance. The passage of the California act was followed by similar enactments in several other states. The first real impetus came, however, in 1936 with the *Old Dearborn* decision.(7) The essential idea here, which has been in the background of other decisions, is that the sale of a branded or trademarked product by a manufacturer does not at the same time transfer to the buyer (wholesaler or retailer) ownership of the goodwill which the manufacturer has created for the product and which is represented by the brand name or trademark. The manufacturer has the right to protect that goodwill against price cutting and particularly against loss-leader selling of the product, and this protection may be legally achieved by setting a minimum resale price on the product as set out in the state enactments. The protection of such goodwill is a proper subject for legislation, thus the state enactments are legal. In this way the Court granted the states the right to provide for a particular type of exemption from the antitrust laws.

The second major impetus to the passage of the state laws came in 1937, with the Miller-Tydings Amendment to the Sherman Act. As usual, the N.A.R.D. was the leading group in applying the pressure for the enactment of such an amendment. The state acts clearly could apply only to intrastate commerce and not to interstate commerce, thus considerably limiting their effectiveness. The Miller-Tydings Act provided Congressional recognition of the legality of resale price maintenance contracts in those states which had legalized them, and provided that any products which are in interstate commerce and which are to be sold in states where such contracts are legal may be brought under such contracts.

As a result of the *Old Dearborn* decision and the Miller-Tydings Act, by 1941 all but Texas, Vermont, Missouri, and the District of Columbia had state laws legalizing resale price maintenance contracts, and in most cases, these included the nonsigners clause. The ensuing ten years saw the legal triumph of resale price maintenance. The first setback occurred in 1951 with the *Schwegmann* decision,(8) in which the Supreme Court stated that the Miller-Tydings Amendment, while legalizing interstate resale price maintenance contracts, had not specifically exempted the instrument of the nonsigners clause from the antitrust laws. The nonsigners clauses were thus declared to be illegal. To counter this decision, the American Fair Trade Council, which represented a number of manufacturers of branded products, and the so-called Bureau of Education on Fair Trade, which was organized primarily by the retail druggists, went into action. The result, despite much determined op-

position from many quarters (including the Department of Justice and the American Bar Association), was the McGuire-Keogh Fair Trade Enabling Act of 1952, passed as an amendment to the Federal Trade Commission Act, which legalized the use of the nonsigners clause in those states which had legalized it as pertains to intrastate commerce.(9) The *Schwegmann* decision was thus overruled by Congress. As an example of the spirit underlying the passage of the act, it might be appropriate to quote President Truman's statement upon signing the bill: ". . . it does have value in eliminating certain unfair competitive practices, and thereby will help small businessmen to stay in business — which I believe is a healthy thing for our economy and our society." A Congressional Committee Report issued at about the same time states much the same idea, i.e., that such legislation "operates to eliminate loss-leader selling, irresponsible and deceitful price cutting," and so on.(10) The legal triumph of resale price maintenance was at this time, however, tempered by one important fact. In *Sunbeam v. Wentling* (1950),(11) it was decided that sales by mail across state lines were beyond the reach of the nonsigners clause if the state of origin was in non-Fair Trade area. This case was further clarified somewhat later in *General Electric v. Masters*,(12) in which the Circuit Court declared unequivocally that, from a legal standpoint, the sale of such goods occurs in the state in which the mail order house is located, not in the state of destination.

The dam began to break for fair trade in 1953. Since then one state court after another has found the nonsigners clause to be unconstitutional under the terms of the state constitutions (although it has been sustained in some states). (13) The reasons for such decisions are in all cases somewhat indefinite, such clauses being found to be unconstitutional uses of a state's police power or to violate the "due process" clauses of the state constitutions, and the like. It would seem that, whatever the reasons given, they mainly serve to disguise what is essentially a policy decision. A feeling prevalent in some legal circles is that resale price maintenance was justified by the depression conditions of the 1930's, but that the justification for it is now well past.(14) In any case, at last count, eighteen state courts have found the nonsigners clause to be unconstitutional. (In Arizona, a finding of unconstitutionality by a lower court was reversed by a higher court.) In some cases the finding of the courts has been based on the fact that the state enactments had not been reenacted after the *Schwegmann* decision and the McGuire Act. There have been cases where, after such a ruling, the state legislatures passed new acts only to have them ruled unconstitutional on some other ground.

As in the early 1930's, therefore, the battle over resale price maintenance is currently being fought entirely on the state level. The U. S. Supreme Court has refused to review cases concerning the legality of the nonsigners clauses since the passage of the McGuire Act (refusal to review, however, does not explicitly uphold their legality). No serious attempts have been made to repeal the McGuire Act or the Miller-Tydings Amendment despite recommendations by the Department of Justice and the Federal Trade Commission to this effect. On the other hand, there have been attempts t put through a national resale price maintenance bill similar to the state acts, thus extending the legality of resale price maintenance to all the states. (The last such bill introduced for such a purpose disappeared amidst the legislative machinery of Congress in 1959).(15) Current Congressional efforts, however, have been confined to bills proposing strict limitations on loss-leader selling, a first-step remedy proposed by many who advocate the abolition of resale price maintenance.(16).

The legal history of resale price maintenance tells little as to its economic effects.(17) Basically, when combined with the nonsigners clause, a resale price maintenance contract is tantamount to horizontal agreement not only between retail distributors, but often between manufacturers. This seems quite clear as regards retail outlets, but is often not so clear with respect to manufacturers. However, it seems doubtful that a manufacturer will enter into a resale price maintenance contract unless provided with some assurance that his competitors are not only doing likewise, but furthermore that competitors' prices are comparable to his own. The natural conclusion would be that resale price maintenance contracts are feasible only when there are relatively few sellers. Such, indeed, appears to be the case. Nineteen of the industries in which resale price contracts have been used have a high degree of concentration. One source puts the percentage of output, by value, accounted for by the four largest firms in these industries as being, at the very least, 67 per cent, and the percentage accounted for by the eight largest firms at a minimum of 81 per cent.(18) Upon careful exam-

ination, it seems clear that resale price maintenance laws do not provide the consumer with assurance that the manufacturers are in competition with one another, despite the "free and open competition" provisos. Instead, a new opportunity is provided for oligopolists to reach a stable "implicit" price agreement. Theoretically, one would guess that if the situation were one of many sellers, resale price maintenance could only be brought about by means of coercion on the part of the buyers, i.e., the retail outlets. This, however, could only occur if there was some degree of monopoly power, by means of collusion, on the part of the retailers. An example would be the National Association of Retail Druggists.

Another aspect of the problem concerns the nature of the demand for the product. If the price elasticity of the demand for the product is greater than unity within the relevant range, it would *seem* to be in the manufacturer's interests to attempt to obtain a large volume of sales at a low price, and to at least attempt to keep distribution costs at a minimum. If it is to be in his interests to maintain a minimum price below which distributors cannot go, one suspects a large degree of inelasticity of demand for the product. Since industries in which price maintenance is prevalent tend to be somewhat highly concentrated, Chamberlinian-type analysis would lead to the conclusion that the price elasticity of demand for the individual firm is somewhat inelastic, at least in a downward direction (as in the case of a kinked demand curve).

Small retail outlets do show at least one characteristic of perfect competition in that, in most lines of distribution (liquor being a notable exception) there is virtually perfect freedom of entry. If a number of products handled by a particular type of retail outlet are put under resale price maintenance contracts, and if volume does not greatly decline (i.e., demand is price inelastic), the increase in margins on these products will yield an increase in profits for the individual retailer. However, the theory of perfect competition indicates that "super-normal" profits will, in the long run, be extinguished by entry into the industry. If such were the case, it would seem, then, that in the long run retailers would gain no advantage from resale price maintenance. Not only is this what one would expect, but it also seems to have actually been the case in a number of lines of retailing in both this country and in Great Britain.

The question, then, is as to what are the advantages to be gained from resale price maintenance, first by the manufacturers, and second, by the retail distributors. The first advantage which a manufacturer may hope to gain from resale price maintenance contracts is discriminatory treatment by retail outlets in favor of his product. In other words, the aim is that the retailer will give extra selling effort to his product in order to obtain a higher margin. Even if the demand for a product is otherwise somewhat elastic, such efforts may serve to shift the demand curve (outward) such as to provide larger profits. There is, however, another side to the coin: in a particular product line where most manufacturers have entered into such contracts, the retail outlets may instead put the products of those who have not so contracted "under the counter." Entrance into such contracts may become a matter of survival to the firm. (Such has, in fact, occurred.) It is clear, however, that once all the competing producers of a given product line have entered into contracts, no such advantage can be gained.

A second possible reason for a manufacturer to enter into such contracts has already been referred to, i.e., as a force diminishing competition. This may be felt to be particularly desirable under conditions of oligopoly, especially if price warfare is expected to break out otherwise. Conditions of declining demand for the industry may also serve as an incentive in this respect. Other possible reasons are those referred to by the courts: protection of "goodwill" and prevention of loss-leader selling. The first of these two reasons seems a bit insubstantial — there are already laws which protect trademark rights, and these may be sufficient. A more substantial argument can be made for the second point. Fair trade proponents are fond of pointing to the unfortunate demise of the Ingersoll watch as an example. However, without dwelling at great length on the question of loss-leader selling, it seems clear that resale price maintenance is a somewhat more extensive program than would be required for its prevention. Current Congressional proposals appear to recognize this. It might be noted that there is some question as to exactly what constitutes loss-leader selling. Vaguely, it is defined to be the selling of a product below cost, but whether this cost is simply invoice cost, or invoice cost plus a markup to include overhead, or just what, is somewhat unclear. The more recent bills introduced in Congress against loss-leader selling define cost to be invoice cost plus some sort of minimum markup.

The primary proponents of resale price maintenance within more recent years have been the retail distributors rather than the manufacturers. Within the last ten years a number of large corporations formerly practicing resale price maintenance have renounced it. Whatever the advantages to be gained by the manufacturers from such programs, they must be of little importance if the apathy of manufacturers generally can be taken as evidence. Of somewhat more interest, then, are the possible advantages to be gained by the retail distributors from a resale price maintenance program. Some of these advantages bear close similarity to those discussed above.

The first possibility is that which is often claimed by the retailers to be the prime motive underlying their advocacy of resale price maintenance — the elimination of loss-leader selling as a means of competition. In addition to the criticism levelled above against this argument — that there are other means of accomplishing this end — there is yet another. Resale price maintenance diverts competitive effort from price competition to other forms of competition such as advertising, window displays, selling services, and so on — all of which are costly. It is difficult to see how loss-leader selling can be a particularly ruinous form of competition for the small retailer as opposed to the large-scale distributor. Indeed, it might be easier for the small retailer to compete in this way than in others.

There are other reasons for resale price maintenance which have been suggested by its retailer proponents, but all of these serve to partly disguise the one main purpose — the elimination, to as great an extent as possible, of price competition on the retail level. Whereas resale price maintenance carries the threat of increased entry, hence perhaps no increase or even a decline in profits, without it the retailers backing fair-trade legislation are under an even greater threat from the cut-rate mass distributors — chain stores, some department stores, and, more recently, the discount houses. By achieving rapid turnover with a minimum of selling service, such outlets can substantially lower the costs of distribution. In addition, further economies may be gained through buying advantages. The appeal of such outlets, upon which their rapid turnover depends, is, of course, lower prices than the small merchant can offer. Seen in this light, resale price maintenance may be of advantage to the small retailer even if part of the competitive effort is transferred from price-maintained items to non-fair-trade items. As long as the small retailer can gain some degree of relief from price competition, he may have gained something.

This is, indeed, the crux of the problem. In many areas and in many lines of distribution, the small-scale retailer is virtually outmoded. Many consumers clearly prefer to sacrifice the services and personal attentions which he offers in favor of the lower prices which the cut-rate distributor is able to offer. It can safely be said that resale price maintenance, where effective, is capable of being a barrier to innovation in the field of retail distribution. From the standpoint of economic welfare, it serves to misallocate resources in favor of the inefficient distributor. When capital should be flowing out of small-scale retailing, it may tend to flow in or, at the very least, the outflow may tend to be slower than otherwise. One doubts that, in the long run, the small retailer is any better off, and the cut-rate distributor is probably worse off. The consumer is clearly worse off in that this artificial revision of his range of available alternatives results in his paying higher prices. It is difficult to make a statement about the position of manufacturers, but when it is taken into account that many manufacturers have entered into resale price maintenance contracts only under some degree of coercion, it is probably safe to say that, under a regime of resale price maintenance, they are not much better off and may be worse off. It is the consumer, then, who definitely tips the balance — economic welfare is, in the aggregate, decreased by the alterations in the market mechanism which occur under fair trade.

This case should not be overstated, however. Resale price maintenance is of little use unless the products involved meet certain requirements. First of all, as mentioned above, they must be goods which are standardized and readily identifiable, normally by means of a brand or trademark. Secondly, they must be goods which are fairly commonly used, yet which, when handled by the small-scale retailer, may have a relatively slow rate of turnover and carry high margins. Only if these requirements are met can the pattern of distribution be upset by cut-rate retailers seeking rapid turnover of a large volume of goods. This is particularly easy when the small retailer carries a wide variety of products, for the cut-rate dealer can further lower his costs by limiting the range of items he sells and thus increasing his turnover. Further, the demand for resale price maintenance often appears to be particularly strong with products such as drugs and

cosmetics, where intensive advertising enables the manufacturer and retailer to charge inflated prices. It is in areas such as these that manufacturers are often found favoring fair trade. Resale price maintenance is also virtually impossible with products which have widely fluctuating costs of production, usually due to fluctuations in raw materials prices. Finally, it is difficult to maintain resale prices on durable goods when trade-in allowances are used, for this may provide a disguised form of price cutting.

The result is that the range of products on which resale price maintenance is feasible is somewhat limited. It is further limited by the problem of enforcement, some aspects of which have already been discussed. Enforcement is generally most effective when there are but a few major manufacturers, and when these manufacturers have the resources as well as the will to bring defectors into court. A manufacturer who can initially gain the reputation of being a "hard" enforcer generally has little trouble later on. More effective enforcement is also possible when there are either a few rather than many wholesale outlets or when the manufacturer sells directly to the retailers. These conditions facilitate enforcement by making it easier to refuse to sell to price cutters.(19)

It turns out that, in practice, resale prie maintenance is not of any really great importance. In 1954, it was estimated that less than 10 per cent, by value, of all goods sold at retail in the United States were subject to resale price maintenance contracts.(20) The proportion has probably diminished somewhat since then due to the number of states finding the nonsigners clause unconstitituional and due to the withdrawal of corporations such as General Electric, Sunbeam, Ronson, Royal McBee, and Westinghouse from fair-trade programs.(21) The current proportion of fair-trade items would be impossible to estimate without a comprehensive survey, however. Products which are commonly fair traded include numerous drug and cosmetic items, canned baby foods, small arms ammunition, certain types of watches, household sewing machines, razor blades and non-electric razors, photographic film and some photographic equipment, hard surface floor coverings, tires and inner tubes, phonograph records, bottled liquors, books, and some electrical appliances and automobile accessories.(22) Cigarettes have been fair traded in the past, but in recent years competition has not been completely lacking. Attempts have also been made at resale price maintenance in the sale of gasoline, but enforcement problems have proved too formidable for this to be successful.(23)

One major question is the effect of resale price maintenance on prices. Though concerned with only one product (toothpaste), Ward Bowman's study(24) serves to sum up the conclusions reached by others when it states that significant differences in the prices for an individual product are found between fair-trade and non-fair-trade states and between cities and smaller towns. The FTC's *Report on Resale Price Maintenance* (1945)(25) found that the institution of resale price maintenance on an item tended to raise the prices charged on that item by mass volume retailers and to lower the prices charged by the small retail outlets. On balance, however, the result was an increase in prices. On the whole, then, the result of resale price maintenance seems to be higher prices, but not to a drastic degree.

Meanwhile, it has always been possible for ingenious retailers to get around the maintained prices. Discount houses, for example, often specialize in doing so. While they must expect to be pulled into court from time to time, they are a sufficiently important outlet (accounting for 18 per cent of all retail sales in 1954) that most manufacturers will not seek strict enforcement. (26) For reasons mentioned earlier, competing retailers often do not initiate litigation. Another form of competition which might be included under price competition is the use of trading stamps. This practice has been ruled to be, in essence, a form of price cutting on fair-trade items in some states,(27) but has been upheld as not being a breach of resale price maintenance contract in others (the theory being that the consumer does not associate the stamps with any particular items).

It may be concluded, then, that while resale price maintenance does little if any good, it does little really serious harm. It should nonetheless be eliminated as a totally unjustified exception to the antitrust laws. If society decides that small-scale retailers should be preserved from the more basic forces at work in our economy, there must be more equitable ways to accomplish this end. Present practice protects only those who handle a large number of fair-trade goods. Grocers, for example, derive little benefit in that most grocery items are not, and really cannot be, fair traded. It would seem, then, that whatever one's opinion as to the preservation of the small merchant, the McGuire Act and the Miller-

Tydings Amendment should both be repealed. Further legislation may prove desirable in order to prevent the use of refusals to sell and agency dealing as means by which to maintain resale prices.

NOTES

(1) *Dr. Miles Medical Company v. Park and Sons Company*, 220 U.S. 373.

(2) Manufacturers could refuse to sell to price cutters (*U.S. v. Colgate & Company, 250 U.S. 300, 1919), but this could not be used to enforce an illegal agreement to maintain a resale price (*U.S. v. Schroeder's Sons, Inc., *252 U.S. 85, 1920). See Wilcox, pp. 411-412 for discussion.*

(3) Although there are several discussions of this and the preceding points, the best and most concise is found in Wilcox, pp. 411-421.

(4) U.S. v. McKesson and Robbins, Inc., *351 U.S. 305, 1956. For discussion, see* The Georgetown Law Journal, *Fall, 1957, pp. 170-175. Also, see Report of the Attorney General's National Committee*, p. 152, and the *Harvard Law Review*, "The Operation of Fair Trade Programs," Nov., 1955, p. 335, for a more general discussion of the "free and open competition" clause.

(5) The most comprehensive discussion of enforcement problems is found in the *Yale Law Journal*, "The Enforcement of Resale Price Maintenance," Nov., 1959, pp. 168-192. See esp. p. 191.

(6) For discussion, see the *Yale Law Journal*, "Discriminatory Enforcement of Fair Trade Prices: The Problems and Remedies Under State and Federal Laws," Dec., 1955, pp. 235-246.

(7) *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 299 U.S. 183.

(8) *Schwegmann Bros. v. Calvert Corp.* and *Schwegmann Bros. v. Seagram Distillers Corp.*, 341 U.S. 384.

(9) See Wilcox, pp. 411-423 for the most complete and, in some ways, amusing discussion of the machinations underlying the passage of this and the Miller-Tydings Amendment.

(10) Quotations reproduced in *Report of the Attorney General's National Committee*, p.155.

(11) *Sunbeam Corp. v. Wentling*, 185 Fed. 2nd 903.

(12) *General Electric Co. v. Masters Mail Order Co.*, 244 Fed. 2nd 681 (1957), *cert.* denied, 78 Sup. Ct. 32 (1957). For discussion, see *Harvard Law Review*, Dec., 1957, pp. 374-376.

(13) See the *Yale Law Journal*, "The Enforcement of Resale Price Maintenance," *supra.*, footnote, pp. 168-169, and R. W. McKisson, "Government Regulations," *Washington Law Review*, Spring, 1960 (for the latest ruling of which I am aware, i.e., Washington).

(14) *Vanderbilt Law Review*, "Fair Trade and the State Constitutions — A New Trend," Feb., 1957, pp. 415-425.

(15) H.R. 1253 (86th Congress, 1st session, 1959).

(16) For example, H.R. 10048, introduced in February, 1960 (the first of a large number of such bills introduced in the last session) and S. 3590, introduced May 24, 1960.

(17) For discussions of the economics of resale price maintenance, see Yamey, esp. ch. 1; Wilcox, pp. 411-423 and p. 873; Edwards, pp. 66-73; Miller, ch. 12; and Ward Bowman, "The Prerequisites and Effects of Resale Price Maintenance," *University of Chicago Law Review*, Summer, 1955, pp. 848-858. It is impossible to differentiate between the various sources in most of what follows, and some of the interpretation is my own.

(18) See E. S. Herman, "Fair Trade: Origins, Purposes, and Competitive Effects," *The George Washington Law Review*, June, 1959, esp. p. 648 and accompanying discussion, for a more detailed treatment.

(19) See the *Harvard Law Review*, "The Operation of Fair Trade Programs," *supra.*, pp. 334-335.

(20) Wilcox estimate, *supra.*

(21) See the *Yale Law Journal*, "The Enforcement of Resale Price Maintenance," *supra.*, pp. 168-170.

(22) E. S. Herman, *op. cit.*, p. 648, and Wilcox, *supra.*

(23) Whitney, vol. 2, pp. 44-45, and vol. 1, pp. 161-162.

(24) See bibliography.

(25) See bibliography.

(26) Wilcox, *supra.*

(27) For example, see the *Missouri Law Review*, June, 1959, pp. 400-403 for discussion of a recent Massachusetts case in which it was ruled that trading stamps constitute a form of price cutting on fair trade items.

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SIXTH ANNUAL CONVENTION OF
OMICRON CHI EPSILON
NATIONAL HONOR SOCIETY IN ECONOMICS
HELD IN NEW YORK CITY, DECEMBER 27, 1960

MINUTES:

The convention was called to order at 1:30 p.m. by President Charles Siegman. The host chapter was Theta and the meeting was held at Donnell Library Center in New York City. All chapters but Beta, Lambda, Xi, and Pi were present.

Mr. Siegman presented the President's Report.

It was MOVED and PASSED that Cornell University, New York University, and Bethany College be admitted to the Society as Rho, Sigma, and Tau chapters, respectively.

It was MOVED and PASSED that chapters at Southern Methodist University, University of Oklahoma, Syracuse University, Wellesley College and Dartmouth College be admitted to the Society upon final completion of constitutional requirements.

Chapter presidents were reminded by the convention of their obligation to effect a smooth transfer to new chapter officers.iew officers should be given all materials and instructions and the national office should be informed of the new chapter officers' names and addresses.

The convention expressed its special commendations to Professors Bornemann, Hamovitch, Turgeon and Zingler for their activity in spreading the ideals of the Society.

Mr. Joseph Naus presented the Treasurer's Report. It was MOVED and DEFEATED that a $3 per year sustaining fee for all members except honorary members go into effect on January 1, 1961. The Treasurer's Report was ACCEPTED.

The convention elected the following officers to serve one year commencing June 1, 1961:

President: John Guilfoil
Secretary-Treasurer: Joseph Naus
Editor-in-Chief: Robert Hartman
Managing Editor: Alan Canter
New York Regional Vice-President: William Feigin
Southern Regional Vice-President: Byron Brown, Jr.

It was MOVED and PASSED that the Committee on the Constitution formulate the role of the Committee on Policy.

It was MOVED and PASSED that the National Executive Board establish the date and site of the Seventh Annual Convention.

The convention ADJOURNED at 5:30 p.m.

Respectfully submitted,
Joseph Naus
National Secretary-Treasurer

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* Pending Approval